*THE HON'BLE SRI JUSTICE N.V. RAMANA

+Writ Petition No. 16827 of 1997

%Dated 28.04.2006

Eedi Ganiraju, S/o Eedi Venkanna, aged 45 years, R/o Penumaru, Elamanchali Mandal, West Godavari District.

..... PETITIONER

VERSUS

$ The State of Andhra Pradesh, rep. by Secretary, Social Welfare Department, Secretariat Buildings, Hyderabad and others.

.....RESPONDENTS

! Counsel for Petitioner: Sri K.L.N. Swamy

^ Counsel for Respondents: GP for Social Welfare

< GIST:

> HEAD NOTE:

? Cases referred:

1. **(1983) 4 SCC 141**
2. **(1993) 2 SCC 746**
3. **AIR 1965 SC 1029**
4. **(1997) 1 SCC 416**
5. **(2000) 2 Supreme Court Cases 465**

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 16827 of 1997

O r d e r:

The petitioner belongs to Scheduled Caste community. He has three daughters. His eldest daughter, by name Ammaji, aged about 14 years, during 1996-1997, was studying 8th class in P.L.K. High School, Palakol and was staying in S.C. Girls Hostel No.2 at Sambhinipeta. The petitioner states that the Matron of the Hostel, namely Smt. G. Venkatalaxmi, used to take his daughter to her house, for domestic work. While so, the petitioner states that in the month of September, 1996 the husband of the Matron by name Sri. Ganta Daiva Ashirwadam, committed rape on his daughter and continued such acts of rape, till she became pregnant. Immediately, on knowing about the pregnancy, he lodged a report with the Station House Officer, Palakolu, who registered the same as Crime No. 30 of 1997 on 05.03.1997 for the offence under Section 376 IPC and under Section 3(xii) of the Scheduled Castes/Schedule Tribes (Prevention of Atrocities) Act, 1989. The petitioner states that though the District Collector and the Hon'ble Minister for Social Welfare, promised *ex-gratia* of Rs.1,00,000/- and Ac. 1-00 of land and admit his daughter into a residential school for continuing further studies and provide her free medical aid till delivery, they paid only Rs.5,000/-. Therefore, he filed the present writ petition assailing the inaction of the respondents in not paying compensation as promised.

As far back as in January, 1998, the District Collector filed counter. On directions by this Court, the Commissioner, Social Welfare Department, Andhra Pradesh, Hyderabad, filed detailed counter on 10th February, 2006 as to the steps taken on the claim made by the petitioner. The learned Government Pleader for Social Welfare reiterating the counter-averments submitted that the victim as well as the accused belong to Scheduled Caste. As per G.O. Ms. No.3, Social Welfare (H1) Department, dated 16.01.1996, if the victim belongs to Scheduled Caste or Scheduled Tribe and the accused a non-Scheduled Caste and non-Scheduled Tribe, then a sum of Rs.25,000/- will be paid to the victim on the day of incident after her medical examination, and

even though both the victim and accused belong to Scheduled Caste, on humanitarian grounds a sum of Rs. 5,000/- was paid to the victim on 10.04.1997 as *ex gratia*. The Executive Director, S.C. Co-op. Finance Corporation, West Godavari, paid an amount of Rs.11,000/- towards medical expenses. Therefore, the victim is neither entitled to any further monetary compensation nor any land site, and more so when she had already become a major. He submitted that the Matron was suspended, and after departmental enquiry, punishment of stoppage of three annual increments with cumulative effect was imposed. He submitted that the accused was acquitted in the criminal case, while the Matron was convicted for engaging child labour and was imposed a fine of Rs.6,000/-. The victim was admitted and continued in the same hostel for pursuing her further studies. He submitted that there is no provision to provide job to the victim or provide financial assistance to the victim's father. Apart from that, he submitted that neither the accused nor the Matron, has been made a party-respondent. He submitted that the victim having been married to another person, is blessed with two children, and as such, she is not entitled to any compensation. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Social Welfare.

The victim, at the time of incident, was aged about 14 years and was studying 8th class in P.L.K. High School, Palakol. She was residing in the S.C. Girls Hostel No. II at Sambhunipeta, which admittedly, is managed by the Social Welfare Department. The Matron, who is in-charge of the hostel and custodian of the inmates of the hostel and responsible for taking their care, had moved the victim out of the hostel to her residence for domestic work, where her husband is said to have raped the victim. The factum of the rape of the victim by the husband of the Matron came to light only when the victim became pregnant.

Though the husband of the Matron is said to have been acquitted of the charge of rape by the Criminal Court in the criminal case registered against him, the fact remains, the Matron, who was responsible for taking the care of the inmates of the hostel, was found guilty by the Criminal Court of the charge of taking the victim out of the hostel and engaging her as domestic labour in her house, and was inflicted with the punishment of fine. Even in the departmental enquiry, she was found guilty of the charges leveled against her, and was visited with punishment of stoppage of three annual increments. May be the

husband of the Matran was acquitted, but the fact remains, the victim for the acts of the Matron, got unwarranted pregnancy at a tender age. Had the Matron not moved the victim out of the hostel, she would not have got the pregnancy. The fact that the victim got pregnancy, is an indication, that her body was violated, which is a violation of fundamental right of right to life, guaranteed under Article 21 of the Constitution. Therefore, the respondents cannot contend that the victim is not entitled to any compensation.

Be that as it may, the Government has not only a social obligation to establish hostels for poor boys and girls belonging to weaker sections of the society, but also has a responsibility to ensure that such hostels are managed properly and the inmates of the hostels are safe from unscrupulous elements and their health and lives are protected. For the acts and lapses of its officers, which result in violation of fundamental rights of citizens, the Government is vicariously liable. Since for the lapse of its officer, namely the Matron, the victim got unwarranted pregnancy, the Government is vicariously liable to answer for the lapse of its officer and pay compensation to the wronged victim. Had not the Matron moved the victim from the hostel for domestic work, the incident would not have occurred, and the victim would not have got unwarranted pregnancy, but for the lapse of its officer, the incident had occurred, and the victim had to carry unwarranted pregnancy at a tender age. Therefore, for the lapse of its officer, namely the Matron, the Government is not only vicariously liable, but it should own moral responsibility, and pay appropriate compensation to the victim.

May be, the victim and the accused belong to Scheduled Caste, but that by itself is not a ground to deny relief to the victim, for the reason that the provisions of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 may not get attracted to the accused and the victim may not be entitled to any compensation under G.O. Ms. No. 3, Social Welfare (H1) Department, dated 16.01.1996, but the fact remains, rape was said to have been committed on a minor girl, which is not only a gender based offence, but is an offence against society, and for such serious offence, the victim should be compensated properly, and more so when such offence took place when the victim was in the custody of the S.C. Girls Hostel, which admittedly, is managed by the Government through its officers. Though, the respondents had provided necessary medical treatment and *ex-gratia*, they are very paltry, and even though she is said to have subsequently married to another person, they are no reasons for the respondents to deny compensation, for by reason of her

marriage to another person, the stigma of rape, attached to her, does not get wiped out, and she has to face the stigma all through her life even if she is married to another person. Therefore, the grounds taken by the respondents, are no grounds at all, to deny compensation to the victim.

Now, it may be noticed whether for the lapse of the Matron, who is an officer of the Government, the Government is vicariously liable for payment of compensation, to a wronged person, whose personal life and liberty guaranteed under Article 21 of the Constitution was violated, and whether this Court in public law proceedings, despite availability of civil law remedy, can award compensation to a victim, whose fundamental right has been violated for the lapse of the officers of the Government, which is responsible for protecting the rights of its citizens.

There is no doubt that there is no express provision in the Constitution of India, for grant of compensation to the victim or his heir, for violation of his fundamental rights, but the apex Court has judicially evolved a right to compensation to the victim or his heir by way of monetary amends and redressal in cases of established unconstitutional deprivation of personal liberty or life guaranteed under Article 21 of the Constitution, by the State, its instrumentalities or servants, and the High Courts having been vested with the power under Article 226 of the Constitution to enforce fundamental rights, can be said to have no power to grant compensation to a victim or his heir, whose fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution, is violated by the State, its instrumentalities or servants.

In **Rudal Sah v. State of Bihar**[1], the apex Court was concerned with a case, where a prisoner was kept under illegal detention for 14 years, even after his acquittal by the Sessions Court. Disbelieving the plea of the State that the prisoner was not released from jail upon his acquittal as he was insane, the apex Court observed that the prisoner having been illegally detained after his acquittal, and his personal liberty having been violated by the State, under Article 32 of the Constitution of India, it can direct grant of compensation to the victim by the State, for his illegal detention without affecting his right to sue for damages. Observing so, the apex Court held as under:

> Although Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously though the ordinary processes of Courts, such as money claims, the Supreme Court in exercise of its jurisdiction under this Article can pass an order for the payment of money, if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The petitioner can be relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld

his claim. But where the court has already found, as in the present case, that the petitioner's prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in the suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be mnere lip service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation of that right and secure due compliance with the mandate of Article 21, is to mulct its violaters in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. Therefore, the State must repair the damage done by the officers to the petitioner's rights. It may have recourse against these officers.

The apex Court in **Nilabati Behera v. State of Orissa**[2], was dealing with a case relating to the death of 22 year old boy in police custody, whose mother made a claim for compensation, for contravention of fundamental right to life guaranteed under Article 21 of the Constitution. The apex court held that:

The supreme Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 to the victim or the heir of the victim whose fundamental rights under Article 21 are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceeding.

The apex Court, in **Nilabati Behera v. State of Bihar**, distinguished its decision in **Kasturilal Ralia Ram Jain v. State of U.P.**[3], wherein the plea of sovereign immunity in case of vicarious liability of the State for the tortuous acts of its servants, was upheld, stating that the plea of sovereign immunity was confined to the sphere of liability in tort, and that it is distinct from the State's liability for contravention of fundamental rights, to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Article 32 and 226 of the Constitution, which enable award of compensation for contravention of fundamental rights, when the only practical mode of enforcement of the fundamental right can be award of compensation. The apex Court further held as follows:

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Courts under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does

not apply, even though it may be available as a defence in private law in an action based on tort. 'A claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226.

The fact that public proceedings and private law proceedings are different, was succinctly explained by the apex Court in **Nelabati Behera v. State of Bihar**, as under:

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system, which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong of the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law, but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

In **D.K. Basu v. State of West Bengal**[4], the apex Court took up a letter addressed by the Legal Aid Services, West Bengal, with regard to deaths in police lock-ups and custody, which were going unpunished, as Public Interest Litigation, and after issuing notices to all concerned and upon receiving responses from them, considered the matter in detail with respect to payment of compensation in cases where the right to life and personal liberty of persons is violated by the police. The apex Court referring to the principle
ubi jus ibi remedium, held as follows:

There is no wrong without a remedy. The laws wills that in every case where a man is wronged and damaged, he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. There is indeed no express provision in the Constitution of India for grant of compensation for violation of fundamental right to life, nonetheless, the Supreme Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.

Applying the above principle *ubi jus ibi remedium* and quoting its decision in **Nilabati Behera v. State of Bihar**, the apex Court, with regard to grant of compensation for established violation of fundamental rights under public law remedy, held as follows:

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power, but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State, which failed in the discharge of its public duty to protect the fundamental rights of the citizens.

In **Chairman, Railway Board v. Chandrima Das**[5], the apex Court dealt with an appeal filed by the Chairman, Railway Board, assailing the order passed by the Calcutta High Court, allowing the petition, filed by a practicing Advocate, under Article 226 of the Constitution, claiming compensation against the Railway Board and others, for rape of a foreign national by a gang of men, which included employees of the Railways. While dismissing the appeal of the Railway Board, and upholding the order of the High Court of Calcutta, in granting compensation to the victim, the apex Court held that right to life under Article 21 of the Constitution of India, included right to live with human dignity, and that right to life being a basic human right, rape violated the said basic human right. It held that when a writ petition alleges violation of a fundamental right to life, guaranteed under Article 21 of the Constitution, where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be available under public law, notwithstanding

that a suit could be filed for damages under private law. It held that the meaning of the word "life" cannot be narrowed down, and that according to the tenor of the language used in Article 21, it will be available not only to every citizen of the country, but also to a "person" who may not be a citizen of the country. Applying this principle, the apex Court held that even those who are not citizens of this country and who have come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions, and they also have a right to "life" in this country so long as they are here, with human dignity, and that the State is under an obligation to protect the life of every citizen in this country, so also the life of the persons who are not citizens.

Upholding the judgment of the Calcutta High Court, the apex Court held as under:

> H, who was not the citizen of this country, but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "right to life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her under Article 21 was thus violated. Consequently, the State was under a constitutional liability to pay compensation to her.

Thus from the rulings above cited, it is clear that this Court under Article 226 of the Constitution has the power to direct the State to pay compensation to a person, whose right to life and liberty, guaranteed under Article 21 of the Constitution, is violated by the State or its instrumentalities or its officers, and recover the same from its officers, for whose lapse it had to pay compensation. In the instant case, as stated above, for the lapse of its officer, namely the Matron, the victim got unwarranted pregnancy at a tender age, and the victim's right to life and liberty having been violated for the lapse of its servant, the Government is vicariously liable to pay compensation to the victim, whose precious right to life and liberty, guaranteed under Article 21 of the Constitution has been violated.

In the above view of the matter, and having regard to the decisions of the apex Court, which held that the High Courts under Article 226 of the Constitution, can grant compensation to the victim, who constitutional right has been violated by the State, its instrumentalities or its officers, I am of the considered opinion that the ends of justice would be met, if the respondents are directed to pay compensation of Rs.2,00,000/- to the victim instead of paying to the

petitioner, as she attained majority.

Accordingly, the writ petition is allowed. There shall be a direction to the respondents to pay compensation of Rs.2,00,000/- (Rupees two lakhs only) to the victim within a period of two months from the date of receipt of a copy of this order.

Before parting with the case, I consider it appropriate to issue directions to prevent recurrence of these type of incidents. Social Welfare Hostels are places where children of poor and weaker sections of society are provided sustenance, which enables them to continue their education. Social Welfare Hostels are established for the benefit of the children of the poor and economically weaker sections of society, who cannot afford to provide food and education simultaneously to their children. To encourage children of the poor and economically weaker sections of the society to continue their education and join the main stream of the society and to prevent school dropouts among the socially backward children, and also having regard to the constitutional obligations placed on the State under Articles 15, 21, 21-A, 38, 39(e), 41, 45, 46 and 47 of the Constitution, which not only guarantee right to life and right to education to all children below 14 years, but also require the State to secure a social order for the promotion of welfare of the people, to ensure that tender aged children are not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, to make effective provision for right to education, to make provision for free and compulsory education for children, promote educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections and has the duty to raise the level of nutrition and the standard of living and to improve public health. It is in furtherance of these constitutional obligations that the Government established Social Welfare Hostels. But, the Social Welfare Hostels, which are established for realizing the above constitutional goals, are becoming a living hell for the poor children, and this is evident from the spate of complaints, which are reported day in and day out in the press. Most of the complaints relate to sexual exploitation, child abuse, serving insufficient or stale food or mal-nutritious food, physical exploitation, child labour, poor maintenance of the hostels, not providing medical facilities to the inmates etc. The nature of complaints received reflect the sorry state of affairs of the functioning of the Social Welfare Hostels. The poor manner in which the Social Welfare Hostels are managed and maintained, gives an

indication that there is no proper check on the activities and affairs of the wardens. This may be because the superior officers, who are supposed to supervise the functioning of the hostels, either are hand in glove with the managers/wardens or are reluctant to exercise proper check on them for obvious reasons. If the manner in which the Social Welfare Hostels are being managed is allowed to continue, then the realization of the constitutional goals, for which they have been established, would be a mirage. The Social Welfare Hostels, rather than advancing the cause of the poor children, are seeking to advance the interests of the anti-social elements. If anti-social elements are allowed to take charge of the Social Welfare Hostels, then no parent of the poor and socially backward children, would be willing to send their children to the Social Welfare Hostel, and the resultant effect would be that the children of the poor and economically and socially weaker sections of the society, for lack of economic means, would dis-continue their studies, thereby affecting the very foundation of the children, who are the future of tomorrow.

It is therefore essential that the Chief Secretary, Government of Andhra Pradesh, Hyderabad, in consultation with the Principal Secretary in the Social Welfare Department of the Government of Andhra Pradesh, constitutes an Expert Committee to examine the problems being faced by the children living in the Social Welfare Hostels, and to suggest measures to improve the living conditions of the children living in the hostels, to prevent child abuse and provide a congenial atmosphere, for continuing their education etc. Based on the suggestions, which the Expert Committee would give, the Government shall pass orders directing the concerned to implement them in letter and spirit. The Chief Secretary, Government of Andhra Pradesh, Hyderabad, shall also set up vigilance teams for conducting periodical inspections and surprise raids on the Social Welfare Hostels, redress the grievance of the children living in the hostels, and take stringent action against the erring officials based on the reports that may be submitted by the vigilance teams.

I hope and trust the Chief Secretary, would take up the issue on a priority basis, and submit his compliance report to the Court.

N.V. RAMANA, J.

Date: 28th April, 2006.
KSR

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[1] (1983) 4 SCC 141

[2] (1993) 2 SCC 746

[3] AIR 1965 SC 1029

[4] (1997) 1 SCC 416

[5] (2000) 2 Supreme Court Cases 465